

GO Committee #2
June 30, 2016
Discussion

MEMORANDUM

June 29, 2016

TO: Government Operations & Fiscal Policy Committee

FROM: Jacob Sesker, Senior Legislative Analyst 
Robert H. Drummer, Senior Legislative Attorney 

SUBJECT: Discussion – Property Tax Credit for Income Tax Offset

Purpose

The purpose of this discussion is to discuss legal and policy issues surrounding eligibility for the County's property tax credit for income tax offset. Following the discussion, Council staff would like to get a sense as to whether the Committee supports legislation to clarify the County's current interpretation that a taxpayer need not complete and submit the State's Homestead Tax Credit application in order to receive the County's property tax credit for income tax offset. If the Committee supports this clarifying legislation, the Committee should also discuss with the Department of Finance the mechanics of making a local determination of income tax offset credit eligibility.

Background

Maryland law permits counties to provide a property tax credit to offset a portion of the income tax levied. Under Md. Code, Tax-Property §9-221 (Property Tax Credit for Income Tax Offset), the credit is only available to the owner-occupied property of a homeowner, as described in Md. Code, Tax-Property §9-105 (Homestead Tax Credit),¹ which in turn defines a homeowner as an individual having a legal interest in a dwelling. A dwelling is then defined as a house or unit that is used as a principal residence and is actually occupied as such (or expected to be occupied as such) for at least 6 months out of the relevant 12 month period.

¹ The State Homestead Tax Credit is a "circuit-breaker" that limits the amount of any annual property tax increase for homeowners who use the home as a principal residence and occupy it as such for at least 6 months out of the relevant 12 month period. The impact of this "circuit-breaker" protection is felt during periods of rapidly rising assessments. The effect of the credit is to spread the increase out over multiple years.

Montgomery County implemented the property tax credit for income tax offset² law in County Code §52-11B, which states that an “eligible taxpayer is any homeowner who *qualifies* for a homestead property tax credit under Maryland Code, Tax-Property Article, Section 9-105, or any successor provision.” The Montgomery County law further states that a taxpayer need not file an application to receive the income tax offset credit.

Several years later, the State of Maryland amended Tax-Property §9-105 (Homestead Tax Credit). The amendment added a new requirement to the Homestead Tax Credit law: to qualify for the credit under this section, a homeowner must submit an application for the credit to the State.

This change to the Homestead Tax Credit law has resulted in some confusion about the County’s property tax credit for income tax offset. See, for example, Civic Federation White Paper, ©1-5. As stated above, the purpose of this briefing is to discuss the relevant facts, present policy alternatives, and receive guidance from the Committee as to any possible legislative clarifications.

Discussion

1. Is there a link under Maryland law between the State Homestead Tax Credit and the State law enabling counties to implement a property tax credit for income tax offset?

No. As noted above, Tax-Property §9-221 (Property Tax Credit for Income Tax Offset) **does** incorporate by reference the definition of “homeowner” in Tax-Property §9-105 (Homestead Tax Credit). There is no other link under State law between these two sections of the Tax-Property Article. **There is no indication that the legislature intended, by adding the Homestead Tax Credit application requirement, to affect eligibility for any local income tax offset credits.** At the time the Homestead application requirement was enacted, SDAT advised that the Homestead application requirement was not intended to affect anything other than the Homestead Tax Credit, and SDAT implemented the Application requirement in a way that ensured that it did not affect other credits.

2. Is there a link under Montgomery County law between the County’s property tax credit for income tax offset and the State’s Homestead Tax Credit law?

Yes. Montgomery County Code §52-11B entitles eligible taxpayers to receive a property tax credit to offset certain income tax revenues. An eligible taxpayer is any homeowner who *qualifies* for a homestead property tax credit under Maryland Code, Tax-Property Article, Section §9-105, or any successor provision. This reference allows Montgomery County to refer to an existing definition in the State code, thereby limiting the number of statutory definitions. Unfortunately, it also adds ambiguity to the County law by appearing to allow Montgomery County to piggyback on the State’s determination of eligibility for the Homestead Tax Credit.

The County Attorney and the Department of Finance have consistently interpreted the County income tax offset credit law to not require a taxpayer to file the State application for the Homestead Credit. See, e.g., Finance Response to Wilen (2014), ©6-7. **The County Attorney believes that this section should be amended to remove any ambiguity.**

² The amount of the County’s property tax credit for income tax offset is set annually by resolution. For FY17, the credit is \$692 per eligible homeowner. Approximately 244,000 taxpayers will receive the credit in FY17.

3. *Has the Council ever decided as a matter of policy that Montgomery County taxpayers must satisfy the application requirement of the State's Homestead Tax Credit law in order to receive the County's property tax credit for income tax offset?*

No. There is no evidence to suggest that the County Council ever made a policy decision that Montgomery County taxpayers, in order to be eligible to receive the property tax credit for income tax offset, must satisfy the application requirement of the State's Homestead Tax Credit. The County's property tax credit for income tax offset was created in 1998, and the changes to the State Homestead Tax Credit law occurred in 2005. Furthermore, **the County's law expressly states that a taxpayer need not file an application to receive the County's credit.** Therefore, the County law states a policy that eligibility would not depend on whether or not a taxpayer had completed an application or certification form.

4. *Has Montgomery County ever informed taxpayers that they would lose their property tax credit for income tax offset if they do not submit an application to the State for the Homestead Tax Credit?*

No. Consistent with Montgomery County's interpretation that there is no connection between the property tax credit for income tax offset and the State application for the Homestead Tax Credit, and the unambiguous position from SDAT at the time they initiated the homestead credit application process, the Department of Finance has indicated that there has never been any public information campaign to warn County taxpayers that they would lose their property tax credit for income tax offset if they do not apply for the State's Homestead Tax Credit. See Finance Responses to Council Staff, ©10.

5. *Why might an individual not submit an application for the Homestead Tax Credit?*

Some individuals might choose to not submit an application because they are claiming principal residence status when they do not in fact reside in the property as a principal residence. **Among the many other reasons that an individual might not have submitted an application are the following: an unwillingness to share identifying information (such as social security numbers) with a governmental entity; and because they do not appreciate the significance of the Homestead Tax Credit's circuit-breaker protection, given that the period after the law took effect was generally characterized by falling assessments and a modest rebound.**

In Levy Year 2014, the total number of Montgomery County recipients of the Homestead Tax Credit was 2,334. To illustrate the cyclical nature of this tax credit, in Levy Year 2007, the total number of recipients was 225,912 (nearly 100 times the number of LY14 recipients!). See Tax Credit Expenditure Report-Homestead Tax Credit, ©11. It is not surprising that many otherwise eligible households would not have completed the application for a tax credit for which only a small percentage of homeowners are eligible.

In contrast, in LY14, the number of recipients of the local income tax offset credit was 243,913. See Tax Credit Expenditure Report-Local Income Tax Offset, ©12.

6. *How many homeowners have not submitted an application for the Homestead Tax Credit?*

According to Finance, “As of April 2016, over **96,000** homeowners have not yet even applied for the HTC, and we don’t know which would be eligible for the HTC or not.” See Finance’s answers to questions at ©8-10. There are 253,000 County properties that have principal residence occupancy status.³ The 96,000 homeowners who have not applied for the HTC represent 38% of the total number of County homeowners.

If the County began interpreting the income tax offset credit law to require the Homestead Tax Credit application, then 96,000 properties would lose the credit. Many (presumably the overwhelming majority) of the individuals that would lose the credit would in fact be owner-occupants of a principal residence.

Of course, many of those that lose the credit would contact the County (through 311), legislators, the state delegation, and the press. Ultimately, individual appeals could end up in tax court. Among the potential consequences would be a need for peak demand staffing at 311, additional staff in Finance, Division of Treasury, a need for tens of thousands of revised property tax bills with increased processing and printing/ mailing costs and issuance of refund checks plus interest, and a great deal of uncertainty in the property tax revenue estimates.

7. *What do we know about the percentage of units that are owner occupied here and across the nation?*

The US Census does count housing units, occupied housing units, owner-occupied housing units, and renter-occupied housing units. **Nationally, 65.1% of occupied housing units are owner occupied** (US Census, 2010). **In Montgomery County, 67.6% of occupied housing units are owner occupied** (US Census, 2010). Given the County’s historically suburban nature and relative wealth, it is easy to imagine that actual homeownership numbers would be somewhat higher than other locations.

If one were to assume that all 96,000 applications that have not been submitted represent homes that are not actually owner-occupied, then that would mean that the actual percentage of Montgomery County occupied housing units that are owner occupied is 40.7%, well below the 65.1% national average. This significant deviation is difficult to explain given the sample sizes involved and suggests that the vast majority of the 96,000 homes are indeed owner-occupied. **In all likelihood, the actual number of owner-occupied principal residences is similar to the number of households who receive the credit in any given year.**

8. *How do properties get coded for the property tax credit for income tax offset today?*

Purchasers of homes are asked to indicate whether they intend to occupy the home as their principal residence on both an Intake Sheet and the property deed. SDAT then codes the property. Assuming that the taxpayer also submits the Homestead Tax Credit application, SDAT assigns a code to the taxpayer that indicates that the individual is eligible to receive **both** the State’s Homestead Tax

³ This number is somewhat higher than the number of owner-occupied housing units per the 2010 US Census (241,465), and also higher than the actual number of credit recipients in LY14 (243,913).

Credit **and** the County's property tax credit for income tax offset (there are separate codes for Occupancy, which drives the ITOC, and for the Homestead Tax Credit).

For homes that have not recently transferred and for which the taxpayer has not submitted the Homestead Tax Credit application, SDAT changes the code for the Homestead credit. The new code is one that indicates that the home cannot receive the Homestead Tax Credit, but is still an owner-occupied principal residence (i.e., can still receive the County's property tax credit for income tax offset).

When Montgomery County identifies homes that should not be receiving either credit (through the Department of Finance's compliance efforts), the County sends the list of tax accounts to SDAT to change the Occupancy code so that it becomes "Not a Principal Residence." The property is no longer eligible for the ITOC or the Homestead Tax Credit.⁴ Recently, however, SDAT has not updated the taxpayer accounts to reflect the new information that the County has provided, and has told Finance that they would not be able to make these changes on any fixed schedule.

9. Could the County assign its own codes to indicate whether the account is eligible for the County's property tax credit for income tax offset?

Finance advises that this can be done with new resources to provide new programming/coding in the Tax Assessment System, and then ongoing resources in Finance, Division of Treasury and possibly Finance, Division of Information Technology. This change in the County system is needed because new State data overwrites data in the Tax Assessment System, and the State sends Finance a minimum of 36 data files each year. This means that all accounts that the County has changed to remove the ITOC will have to be monitored, reviewed and updated to maintain the County changes a minimum of 36 times per year. Finance would attempt to automate as much of this as possible.

Attachments:

- ©1: Civic Federation White Paper
- ©6: Finance Response to Wilen (2014)
- ©8: Finance Response to Council Staff Questions
- ©11: Tax Credit Expenditure Report-Homestead Tax Credit
- ©12: Tax Credit Expenditure Report-Local Income Tax Offset

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⁴ Of course, individuals also have an opportunity to appeal (for example, many elderly residents/empty nesters may simply be renting out a room in their home and still in fact occupy the unit as their principal residence).

**Montgomery County Civic Federation
White Paper**

**Analysis of the Income Tax Offset Credit: Montgomery
County distributes \$52 million in tax credits each year
to property owners who are not entitled to these credits**

**Prepared by Louis Wilen
Montgomery County Civic Federation Public Utilities Committee Chair**

November 2015

Tucked away in plain sight on most Montgomery County tax bills is a \$692 tax credit that is rarely discussed in public by county or state legislators. In recent years, it has been the largest property tax credit issued to Montgomery County homeowners. For tens of thousands of homeowners, though, it is an ill-gotten bonus, issued illegally to rental property investors who are not legally entitled to receive this credit. Based on data from the Maryland State Department of Assessments and Taxation (SDAT), the estimated annual tax revenue loss is approximately \$52 million.

In state law books, this \$692 credit is officially named the “Income Tax Offset Credit,” or ITOC, a phrase almost never used in county documents. On tax bills, it is labeled as “COUNTY PROPERTY TAX CREDIT, ” an honest but vague description of what has become the largest discount on tax bills for the past several years.

In spite of its legal name, the tax has nothing to do with an individual’s income tax. It is called the “Income Tax Offset Credit” because state law allows it to be issued only by the tier of counties that have the highest income tax rates – which, of course, includes Montgomery County. Although several counties have been granted authority from the state to issue it, only Montgomery County has made a practice of issuing the ITOC every year. (A few counties have very occasionally issued the ITOC in the past, usually in amounts of \$100 or less.)

Since the ITOC is a flat credit, the real property tax rate in Montgomery County is as progressive as county politics. Without the ITOC, the owner of a \$300,000 home would pay \$2998 in county property taxes in 2015. The ITOC trims the county tax bill to \$2306, a reduction of 23 percent.

At the upper end of the wealth scale, the owner of a \$900,000 home would pay about \$8992 in county property taxes. The ITOC cuts the tax to \$8300, a reduction of slightly more than 7 percent.

To receive the ITOC, the only qualification is that a homeowner must actually use their home as their principal residence. Under state law, investment properties (rental properties) and second homes are not entitled to receive the ITOC.

With a network of hundreds of cameras along roadways and in county buildings, Montgomery County watches its residents carefully but – for now – does not watch to see who actually lives in residential properties. Instead, determination of “principal residence status” is performed by the Maryland State Department of Assessments and Taxation, or SDAT.

Property tax credits for principal residences have been part of Maryland law for several decades. The homestead credit is perhaps the best known of these credits. In times of rapid increases in real estate prices, the homestead credit puts a cap on the taxable basis of properties to help prevent residents from being taxed out of their homes. In Montgomery County the cap is 10 percent per year. In most other counties, the cap ranges

from between zero and eight percent per year.

In 2006, several state legislators were alerted to the fact that thousands – perhaps hundreds of thousands – of rental properties were incorrectly classified by the SDAT as principal residences. With help from SDAT analysts, the legislators established that millions of dollars of homestead credits and ITOCs were being improperly issued to owners of rental properties and second homes. (The improper issuance of credits was initially reported by the Washington Post on July 4, 2005 in an article titled “*No extra credit for Montgomery landlords.*”)

Realizing that huge amounts of county and state tax revenue were being lost due to improper issuance of homestead credits, the state enacted laws in 2007 and 2013 that required every Maryland homeowner who wanted to continue receiving “principal residence” credits to submit a one-time application by December 30, 2013 certifying that their home was their principal residence. The certification would stay in effect until the homeowner moved out of their home – at which point, if the homeowner purchased another home, he or she could submit a new principal residence certification. Homeowners who did not meet the December 30, 2013 deadline were still allowed to submit the certification, but it would not go into effect until the following year. (Any homeowner can submit the application at any time for processing in the next tax year.)

Starting in 2007 and continuing with reminder notices through 2013, all homeowners received principal residence certification forms from the SDAT. The application process was designed to be as easy as possible. Homeowners could submit the application online or on a paper form. A “hotline” was established to assist homeowners with completion of the form. News media repeatedly reminded homeowners to fill out the form. In addition, Montgomery County included reminder notices about the certification with tax bills.

By the end of 2013, about 80% of Maryland homeowners had either submitted the principal residence certification or notified the SDAT that a home that they own was actually not their principal residence. Homeowners who submitted the principal residence form continued to remain eligible for homestead credits. (The law required that the homestead credit and ITOC be removed from any property whose owner did not submit the principal residence certification by the deadline. There was no requirement that owners of rental properties complete the form since the original plan was to revoke “principal residence” status for any homeowner who did not complete the form by the deadline.)

As required by state law, beginning in 2014 Montgomery County stopped issuing homestead tax credits for properties whose owners did not submit the principal residence certification. (The appreciation rate of the vast majority of properties did not exceed 10 percent in 2014 and 2015, so very few properties actually would have received homestead credits in those years anyway.)

But in clear violation of state law, Montgomery County continued to issue the ITOC in 2014 and 2015 to owners of properties that did not submit the principal residence certification. The specific tactic that was used to continue to issue the ITOC to ineligible properties while removing the homestead credit from the very same properties is subtly revealed in a footnote in an internal county council memo.

The footnote reads:

¹ There is a very important distinction about the existing "H" and "D" owner occupied codes in the data system and the four new codes (R, U, M, and L) that SDAT developed to remove Homestead Tax Credit eligibility for the July 2014 tax bill. SDAT is not going to use the "H" and "D" codes to remove the credits for the July 2014 tax bill for non-filers. Instead SDAT will use the new codes. Also, the H and D codes will remain to allow semi-annual payment by the property owner because the General Assembly did not include semi-annual payment as one of the lost benefits for failure to submit the Homestead Tax Credit application by the extended December 30, 2013 deadline.

Prepared by: Department of Finance 4/25/2014

It is safe to say that few citizens read internal county council memos, even fewer read the footnotes, and probably almost none understood the significance of the footnote in the April 25, 2014 memo about property tax credits. But this footnote reveals how the county quietly managed to illegally issue over \$50 million of ITOCs to properties whose owners had not submitted certification forms.

It would take many paragraphs to translate the cryptic coding in the footnote into a description of how the county's tax bill programs work in conjunction with the SDAT's assessment database. Even then, few people other than computer programmers would understand the details of how the county illegally continued to issue the ITOC to non-principal residences while removing the homestead credit from those properties. But in simplest terms, here is what happened: the County convinced the SDAT to add a new field to the SDAT records – a field that is hidden from the public on the SDAT real property assessment web site – while retaining the publicly visible "Principal Residence" field.

Ostensibly, the new field was created to allow homeowners who did not submit the principal residence certification to continue to make semi-annual tax payments. In reality, the county used the new, hidden field to determine when to remove the homestead credit while ignoring the hidden field when determining whether to issue the ITOC.

With a \$4 billion county budget, an improperly issued credit of \$692 is insignificant. However, SDAT reports show that tens of thousands of property owners have not submitted the principal residence certification form. While no one really knows how many certifications were not submitted because eligible homeowners simply didn't bother and how many are actually investment properties, a comparison of rental license records and "for rent" advertisements to SDAT records and property tax bills indicates that thousands of rental properties illegally received ITOCs in 2014 and 2015. The analysis

indicates that the amount of illegally issued credits in 2014 and 2015 is approximately \$52 million for each of those years.

Unless the appropriate changes are made to the Montgomery County tax billing system, another \$52 million of ITOCs will be illegally issued next year – and even more in subsequent years.

Review of Issues related to Louis Wilen Testimony on Constant Yield Tax Rate 4/22/14

Number of Residential Properties losing the owner occupied designation:

- The number that Mr. Wilen used (93,230 accounts) came from SDAT, and it was developed at the end of last year for public discussion purposes.
- This number of accounts that will lose eligibility for the Homestead Tax Credit for failure to file the application with the State Department of Assessments and Taxation (SDAT), for the July 2014, tax bill could be reduced to 75,869 when SDAT addresses the approximately 20,000 pending applications in Montgomery County where SDAT had to send out subsequent correspondence to the property owner because of a discrepancy in the audit (e.g. same Social Security number shows up on two properties).
- According to SDAT, all of these pending accounts will be resolved before the SDAT cut off for tax billing purposes for the County for Levy Year 14 (FY15) in July 2014.
- The State uses different codes in the Assessment database for eligibility for the Homestead Tax Credit than it does for eligibility for the Income Tax Offset Credit (ITOC).¹

Legal and programmatic considerations for changing the owner occupied designation

- The Office of the County Attorney believes that neither Section 52-11B of the County Code authorizing the ITOC resolution nor Section 9-105 of the State Tax - Property Article authorizes the County to use ineligibility for the Homestead Tax Credit based on failure to file the application with SDAT, as the basis for denying a homeowner eligibility for the ITOC.
- Even assuming the County Government had the legal authority to unilaterally make a change in the owner occupied designation for a residential property in the SDAT tax records it would require substantial recoding of the County's Tax Assessment system since a different code is used for the Homestead Tax Credit eligibility than for ITOC eligibility. This would delay the issuance of the annual property tax bill from early July into August 2014 or later.
- In addition, the County would expect to receive tens of thousands of challenges to the change in designation from homeowners if their eligibility for the ITOC was removed and potentially tens of thousands of revised bills that would have to be printed and mailed

¹ There is a very important distinction about the existing "H" and "D" owner occupied codes in the data system and the four new codes (R, U, M, and L) that SDAT developed to remove Homestead Tax Credit eligibility for the July 2014 tax bill. SDAT is not going to use the "H" and "D" codes to remove the credits for the July 2014 tax bill for non-filers. Instead SDAT will use the new codes. Also, the H and D codes will remain to allow semi-annual payment by the property owner because the General Assembly did not include semi-annual payment as one of the lost benefits for failure to submit the Homestead Tax Credit application by the extended December 30, 2013 deadline.

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Review of Issues related to Louis Wilen Testimony on Constant Yield Tax Rate 4/22/14

at great expense to the County. This would require a temporary up staffing in the 311 Call Center and the Finance Treasury Division to address these service requests.

- If the County did remove eligibility for the ITOC and lost a subsequent legal challenge to its action, then it would be forced to make refunds of up to \$64 million plus interest during FY15 which would deplete reserves and fiscal flexibility in FY15 and possibly requiring offsetting revenue raising measures and/or expenditure reductions in FY15 or subsequent fiscal years.
- The County Government has an existing program in place for tracking and correcting eligibility for owner occupied tax credit eligibility. This tax compliance program, (which requires the County to notify SDAT so they can change the tax records) has already identified several thousand properties that are not eligible for this designation. Our collaborative work with SDAT has resulted in the collection of approximately \$2.6 million in additional property tax revenues as a result of these compliance efforts.

Revenue Impact of changing the owner occupied designation

- Regardless of whether this change is made or not the County is still constrained by the Charter limit on real property tax revenues. If the owner occupied status is changed for 76,000 or 93,000 residential properties it would not materially affect the calculation of the Charter limit on real property tax revenues since it will still equal FY14 real property revenues times the rate of inflation (not including new construction, etc) .
 - It would not suddenly create a \$64 million windfall in the absence of nine votes to exceed the Charter limit.
 - It would actually reduce the amount of property tax revenues under the Charter limit because it would require a lower real property rate which would have an impact on the personal property tax rate which is set at 2.5 times the real property rate.

Tax-Supported Property Tax Revenues				
	Revenues	Difference	Tax Rate (a)	Difference
CE's Recommended Budget	\$1,538,880,000		\$0.996	
Option #1 (b)	\$1,535,307,000	(\$3,573,000)	\$0.960	(\$0.036)
Option #2 (c)	\$1,536,037,000	(\$2,843,000)	\$0.967	(\$0.029)

- NOTES: (a) Weighted average rate and rates for Option #1 and Option #2 are based on more than a three decimal-point reduction for the General Fund rate.
- (b) Assumes 157,777 owner-occupied residences qualify for the \$692 ITOC
- (c) Assumes 175,028 owner-occupied residences qualify for the \$692 ITOC
- (d) There are 306,329 residential properties in the County for LY14. Of these, the County estimated that 250,897 (81.9%) would receive the ITOC and 55,432 would not.

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Joe/Mike/Scott:

As I mentioned recently, we have a late June worksession on the ITOC. I put together some notes/questions below. The GO committee will need to consider: (1) Should the County tie eligibility for the ITOC to the Homestead Tax Credit certification? **STATE LAW PRECLUDES THE COUNTY FROM TYING THE ITOC TO THE HTC APPLICATION/CERTIFICATION.**

(2) Are changes to the current law necessary in order to clarify the Council's intent? Let's talk about these soon—I will look for some time on our schedules in early June. **THE COUNTY LAW SHOULD BE CLARIFIED TO (1) SHOW THAT THE COUNTY HAS THE AUTHORITY TO DETERMINE IF A PROPERTY IS ELIGIBLE FOR THE ITOC, AND (2) TO CLARIFY ITOC ELIGIBILITY SO THAT ELIGIBILITY REQUIREMENTS REFLECT STATE LAW ELIGIBILITY REQUIREMENTS.**

—Jacob

Maryland Tax – Property 9-221
§9-221.

(a) *The Mayor and City Council of Baltimore or the governing body of a county or municipal corporation may grant, by law, a property tax credit against the county or municipal corporation property tax imposed on real property in order to offset in whole or in part increases in the county or municipal corporation income tax revenues resulting from a county income tax rate in excess of 2.6%.*

(b) *The credit granted under this section is available only to the owner-occupied property of a homeowner as defined in § 9-105 of this title.*

(c) *The Mayor and City Council of Baltimore or the governing body of a county or municipal corporation may provide by law for:*

- (1) *the amount of a property tax credit under this section; and*
- (2) *any other provisions necessary to carry out this section.*

The state law authorization states that the credit is available only to the owner-occupied property of a homeowner (as defined in 9-105).

Under 9-105, a homeowner is defined as: "Homeowner" means an individual who has a legal interest in a dwelling or who is an active member of an agricultural ownership entity that has a legal interest in a dwelling.

It appears that 9-105 does not contain a definition of "owner-occupied." However, the law does define "dwelling" as a house (or condo, or...) that is used as a principal residence and is actually occupied, or expected to be actually occupied, by the homeowner for more than 6 months out of the relevant 12 month period.

Sec. 52-11B. Credit to offset certain income tax revenues.

(a) *The Director of Finance must allow each eligible taxpayer a credit against County real property taxes due in each tax year in which the taxpayer is eligible for the credit.*

(b) *An eligible taxpayer is any homeowner who qualifies for a homestead property tax credit under Maryland Code, Tax-Property Article, Section 9-105, or any successor provision.*

(c) *The County Council must set the amount or rate of the credit under this Section annually by resolution, adopted no later than the date the Council sets the property tax rates. A public hearing must be held, with at least 15 days' notice, before the Council adopts a resolution under this Section. The amount or rate of the credit must, in the Council's judgment, offset some or all*

of the income tax revenue resulting from a County income tax rate higher than 2.6%. The Council must set the amount of the credit at zero for any tax year in which the rate of the County income tax does not exceed 2.6%.

(d) The Director must take all actions necessary to apply the credit to each eligible taxpayer. A taxpayer need not file an application to receive the credit. If a taxpayer after filing an application with the Director has been erroneously denied the credit, the taxpayer may appeal that denial to the Maryland Tax Court within 30 days after receiving a notice of denial from the Director. (1998 L.M.C., ch. 7, § 1; 2005 L.M.C., ch. 5, § 1.)

Notes/questions for discussion:

Under State law, in order to qualify for the credit the homeowner shall submit the application form. Can a taxpayer be an eligible taxpayer under County Code 52-11B (b) if the taxpayer does not qualify for a homestead property tax credit? YES. THE TAXPAYER MUST QUALIFY FOR THE HTC, BUT DOES NOT NEED TO BE APPROVED BY THE SDAT FOR THE HTC, BECAUSE THE SDAT IS ONLY APPROVING (OR DENYING) APPLICATIONS FOR THE HTC. AS OF APRIL 2016, OVER 96,000 HOMEOWNERS HAVE NOT EVEN APPLIED FOR THE HTC, AND WE DON'T KNOW WHICH WOULD BE "ELIGIBLE" FOR THE HTC OR NOT (3,100+ APPLICATIONS, IN ADDITION TO THE 96,000+, WERE DENIED HTC STATUS).

Section 52-11B(d) states that a taxpayer "need not file an application to receive the credit". How should we read that language, given that it is so clearly inconsistent with the application that the State put into place later? THE DISJUNCTION IS BECAUSE THE COUNTY ITOC WAS ENACTED BEFORE THE STATE HTC APPLICATION REQUIREMENT.

What is the significance of the fact that the application requirement in the state law was added after the County law? SEE PREVIOUS, AND ALSO NOTE THAT THIS DISJUNCTION IS CAUSING PEOPLE TO BE CONFUSED ABOUT HOW ITOC AND HTC ARE TIED TOGETHER (THEY'RE NOT TIED TOGETHER).

Is it relevant that the County's law states that an eligible taxpayer is one who qualifies under 9-105 or any successor provision? IT IS PROBLEMATIC THAT IT IS WORDED THAT WAY, AND THAT THE COUNTY TIED THE ITOC TO THE HTC IN THIS WAY. AT THE TIME THE COUNTY ENACTED ITS LAW THERE WAS NO HTC APPLICATION REQUIREMENT. WE SHOULD CHANGE THIS SECTION OF THE LAW TO MAKE IT CLEAR THAT THERE IS NO CONNECTION BETWEEN THE HTC AND THE ITOC, OTHER THAN THE ITOC USES THE HTC DEFINITION OF OWNER OCCUPIED PROPERTY.

Mr. Wilen states that "by the end of 2013, about 80% of Maryland homeowners had either submitted the principal residence certification or notified the SDAT that a home that they own was actually not their principal residence." SDAT REPORTED IN APRIL 2016 THAT SOME 96,000 RESIDENTIAL PROPERTIES HAD NO APPLICATION (OUT OF OVER 253,000 PROPERTIES THAT HAVE THE PRINCIPAL RESIDENCE OCCUPANCY STATUS). THIS IS ALMOST 38% OF ALL PROPERTIES THAT ARE HAVE PRINCIPAL RESIDENCE OCCUPANCY CODES (THE FIELD IN THE TAX SYSTEM THAT DETERMINES WHETHER A PROPERTY RECEIVES THE ITOC, OR NOT).

• Does Finance have a current estimate as to how many Montgomery County homeowners have NOT submitted the certification? OVER 96,000, OR 38% OF THE TOTAL NUMBER OF PRINCIPAL RESIDENCE PROPERTIES.

• Does Finance have a current estimate as to how many Montgomery County homeowners, who otherwise would be eligible for the credit, would lose the credit if they were disqualified for failure

to submit the certification form? IF WE HAD TO DENY THE CREDIT TO THOSE WHO DID NOT SUBMIT A HOMESTEAD APPLICATION, IT WOULD BE THE 96K+ AMOUNT.

- Does Finance know how many Montgomery County homeowners notified SDAT that a home that they own was not actually their principal residence? WE DO NOT KNOW THIS. WE EXPECT THAT MOST PEOPLE WOULD NOT DO THIS, AND A CHANGE IN STATUS WOULD BE INITIATED BY A COMPLAINT (USUALLY FROM A NEIGHBOR). WE GET THESE COMPLAINTS, AND SEND THEM TO SDAT FOR REVIEW (AND UPDATING, IF NECESSARY).

The reminder notices were sent from 2007 through 2013. Does Finance have copies of some of these reminder notices on file? WE DO NOT HAVE COPIES OF THE NOTICES. THE NOTICES WERE SENT BY SDAT IN THEIR TRIENNIAL ASSESSMENT NOTICE ENVELOPES, WITH THE NEW ASSESSMENTS.

Did the County send out any of its own notices regarding the homestead certification? If so, please provide copies of those as well. THE COUNTY DID NOT SEND NOTICES.

Mr. Wilen states: "in clear violation of state law, Montgomery County continued to issue the ITOC in 2014 and 2015 to owners of properties that did not submit the principal residence certification." Was there a clear violation of state law? Did the General Assembly ever specify that failure to submit the certification form would mean loss of any local credits granted pursuant to Maryland Tax-Property 9-221? THERE WAS NOT ANY VIOLATION OF STATE OR COUNTY LAW. THE GENERAL ASSEMBLY DID NOT TIE THE REQUIREMENT TO APPLY FOR HOMESTEAD CERTIFICATION TO ANY OTHER CREDITS, EITHER STATE OR LOCAL.

How many other counties in Maryland have local income tax offset credits? NONE.

How many of those counties have stopped providing the local income tax offset credit to taxpayers on the basis of failure to complete the homestead tax certification? NA.

For any counties that did so, what was their experience in terms of factors such as volume of complaints or appeals in 2014 and 2015 (e.g. relative to the number of households that received the local income tax offset credit in 2013)? NA

Homestead Property Tax Credit

Description

To assist homeowners with the fiscal impact from large assessment increases, the Homestead Property Tax Credit program limits the annual taxable assessment increase to a rate set annually by county resolution between 1% and 10%. The Homestead credit is applied against the General County and Special Service Area real property taxes. This program is administered by SDAT and applies only to owner-occupied residential dwellings. Note: this credit is not applicable in the first year following the purchase of a new home.

The State of Maryland, Montgomery County, and municipalities in Montgomery County (with the exception of the Town of Kensington which elected to set the rate at 5% effective LY 2006) use a 10% homestead credit which results in any annual assessment growth in excess of 10% to become a credit. For example, if the annual phase-in of assessment growth is 25%, the homestead credit will reflect 15% while the remaining 10% is reflected in taxable assessment growth that year. In addition to limiting annual growth in taxable assessments for homeowners, the homestead credit spreads out the assessment growth over a longer period of time resulting in a more stable revenue flow. Since the cumulative credit can be significant, some taxpayers may still observe growth in their taxable assessment during times of weak real estate market conditions as prior year growth is still being phased in.

Authority

Maryland Code: § 9-105 of the Tax – Property Article

Effective Date

1985

Contact

SDAT in Baltimore, MD at (410) 767-2165

Fiscal Impact:

<u>Levy Year</u>	<u>Amount (\$)</u>	<u>Rate</u>	<u>Recipients</u>
2014	962,007	10%	2,334
2013	894,907	10%	3,271
2012	2,463,384	10%	7,467
2011	6,904,893	10%	23,768
2010	46,094,294	10%	89,414
2009	134,723,816	10%	176,108
2008	213,955,975	10%	224,125
2007	193,582,619	10%	225,912
2006	135,429,775	10%	214,743
2005	80,437,096	10%	201,661
2004	37,467,835	10%	150,252
2003	13,208,869	10%	91,036
2002	2,669,665	10%	21,082
2001	1,179,837	10%	7,299
2000	240,542	10%	2,200

Property Tax Credit – Local Income Tax Offset

Description

The County may grant, by law, a credit against the county real property tax in order to offset, in whole or in part, increases in the county income tax revenues resulting from a county income tax rate in excess of 2.6%. This tax credit is available only to the owner of an owner occupied residential property (i.e., principal residence), as determined by SDAT. The County establishes the amount of a property tax credit under this section by Resolution for the next levy year. This credit – described as *County Property Tax Credit* on the property tax bill - is applied against the General County and Special Service Area real property taxes.

Note: The County's "piggyback" income tax was 60% of the Maryland income tax (effectively 3.00%) in tax year 1998, and changed to a 3.20% income tax rate based on Maryland Adjusted Gross Income (AGI) effective tax year 2004. Therefore, prior to tax year 2004, the credit could be based on income tax revenues resulting from a county "piggyback" income tax in excess of 50% of the Maryland income tax.

Authority

Maryland Code: § 9-221 of the Tax - Property Article

Effective Date

July 1, 1992

Contact

Montgomery County at (240) 777-0311

Fiscal Impact:

<u>Levy Year</u>	<u>Credit Amount (\$)</u>	<u>Recipients</u>	<u>Total Amount (\$)</u>
2014	692	243,913	168,787,213
2013	692	245,369	168,674,325
2012	692	245,022	168,379,383
2011	692	250,333	169,025,541
2010	692	243,766	168,686,072
2009	690	243,722	168,168,180
2008	579	245,761	142,295,619
2007	613	245,181	150,295,953
2006	221	243,196	53,746,316
2005	116	243,421	28,236,836
2004	0	0	0
2003	0	0	0
2002	0	0	0
2001	0	0	0
2000	0	0	0
1999	0	0	0
1998	50	222,456	11,122,800

Note: This credit was first provided to eligible recipients in levy year 1998.